

of an issue. On Monday, 8th March, the defender lodged a notice of motion to vary the issue. The case appeared in the Single Bills on Wednesday, 10th March, but was continued till Thursday, 11th March, when the pursuer objected to the competency of the motion to vary the issue.

Argued for the pursuer—The motion to vary the issue was incompetent. The Court must be moved to vary the issue within six days of the interlocutor approving thereof. It was not enough that the notice of the motion had been lodged within the six days—*Craig v. Jex-Blake*, March 16, 1871, 9 Macph. 715, 8 S.L.R. 428. Though the interlocutor in this case was pronounced on 2nd March, the case did not appear in the Single Bills until the 10th March, and the motion was therefore too late.

Argued for the defender—*Esto* that the six days expired on Sunday, 7th March, the notice of motion which was lodged on Monday, 8th March, was lodged in time. It was immaterial that the Court had not been moved until after the expiration of the six days.

LORD JUSTICE-CLERK—This objection must be repelled. The last day on which notice of the motion to vary the issue could be given was Monday the 8th. The notice was lodged in process on Monday, and that, I think, is sufficient. When it is lodged, the putting of it out in Single Bills is a matter of procedure which is attended to by the Court, and, according to the usual practice a notice which is lodged on Monday does not come out in Single Bills till Wednesday.

LORD LOW and LORD ARDWALL concurred.

LORD DUNDAS was absent.

The Court repelled the objection.

Counsel for the Pursuer—A. J. P. Menzies.  
Agent—James Wilkie, S.S.C.

Counsel for the Defender—Jameson.  
Agent—William C. Morris, Solicitor.

Thursday March 11.

## SECOND DIVISION.

[Sheriff Court at Aberdeen.]

### CRAIG v. ABERDEEN HARBOUR COMMISSIONERS AND OTHERS.

*Harbour—Ship—Accident—Responsibility of Harbour Authority—Berthing and Unberthing Vessels—Reparation—Culpa.*

While a steam trawler the "Nettle" was being hauled out from its berth at the quay under the directions of the harbour-master by means of a wire rope attached to its stem from the winch of another vessel, the "Edinburgh," so as simultaneously to pull the former out and the latter into her place, A, who was working on board

the "Nettle," was caught by the rope and thrown into the water.

In an action by A against the Harbour Commissioners, and the owners of the "Edinburgh," held that the Harbour Commissioners were alone to blame for the accident, in respect (1) that it was due to the fault of the harbour-master in giving a wrong order, and (2) that no fault on the part of those in charge of the "Edinburgh" had been established.

#### *Expenses—Successful and Unsuccessful Defenders—Liability inter se.*

In an action of damages for personal injury brought against two defenders, each maintained that the injury was due to the fault of the other.

Held that the unsuccessful defender was liable in expenses to the successful defender as well as to the pursuer.

Alexander Craig, fish porter, Aberdeen, brought an action against (1) the Aberdeen Harbour Commissioners, and (2) the Caledonian Steam Trawling Company, Limited, Aberdeen, registered owners of the steam trawler "Edinburgh," in which he craved the Court to ordain the defenders jointly and severally, or severally, to pay him the sum of £200 damages for personal injury.

The pursuer averred—" (Cond. 4) On the morning of 3rd January 1908 the pursuer was engaged by the mate or other officer of the steam trawler 'Nettle' to assist in discharging the catch of the 'Nettle,' and afterwards to assist in cleaning up and preparing the 'Nettle' for sea. . . . In doing so it was necessary for him to draw water from the harbour by means of a bucket attached to a rope. The stem of the 'Nettle' was then close up against the Fish Market Wharf. The vessel was lying at an angle to the wharf with another trawl boat on each side of it, too near to permit of another trawl boat to lie between the 'Nettle' and the boat on either side. (Cond. 5) . . . The harbour-master (Captain James Crombie) was unable to give the steam trawler 'Edinburgh,' belonging to the defenders the Caledonian Steam Trawling Company, Limited, a berth on its arrival in the harbour on the afternoon of 2nd January. The 'Edinburgh' accordingly lay off the wharf until the morning of 3rd January until about 10 o'clock, when the harbour-master or his assistant (Mr Wyness), both of whom were then on the wharf close to the 'Nettle,' and in full view of all that was taking place on the deck of the 'Nettle,' directed the officer in charge of the 'Edinburgh' to approach the wharf. After the 'Edinburgh' had approached so far towards the wharf as to be alongside of the 'Nettle's' stern the harbour-master or his assistant directed one of the crew on board the 'Edinburgh' to attach the wire rope from the 'Edinburgh's' winch to the stem of the 'Nettle,' his purpose apparently being by applying steam to the 'Edinburgh's' winch to pull the 'Nettle' out from the wharf and pull the 'Edinburgh' into its place, and so provide the 'Edinburgh' with the berth occupied by the

'Nettle.' The 'Edinburgh's' rope was accordingly made fast to the 'Nettle's' stem, with the result that it hung loosely from the stem of the 'Nettle,' along its side, and below the level of the 'Nettle's' deck, up to the 'Edinburgh's' winch, which is placed in a position about the middle of the vessel. The pursuer was attending to his duties on board the 'Nettle,' and was not aware of the rope having been placed in this position. The man in charge of the 'Edinburgh's' winch was John Robert Markam, the mate of the 'Edinburgh.' (Cond. 6) The harbour-master and his assistant and Markam were all within a few yards of the side of the 'Nettle,' and had a clear view of its deck. They all knew, or ought to have known, that on steam being applied to the winch the wire rope would come up the side of the 'Nettle' with considerable violence and would strike anyone engaged at the side of the 'Nettle.' They all had a duty to carry out the operation with care and skill, and with proper regard to the safety of persons engaged on board the 'Nettle,' including pursuer. Notwithstanding this duty and obligation, the harbour-master or his assistant recklessly directed the winchman of the 'Edinburgh' to put on steam, and the winchman recklessly put on steam without taking any proper and sufficient precaution to secure that the rope would not, as it became taut, strike any person working on board the 'Nettle,' the result being that the pursuer, who was, when steam was applied, in the act of drawing water from the harbour by means of a rope and bucket, was caught by the wire rope underneath the arms and flung into the harbour. The pursuer was, just before the accident, standing at the rail of the 'Nettle,' leaning slightly over it, and nearer the wharf than the stem of the 'Edinburgh.' The harbour-master, his assistant, and Markam had all a clear view of the deck of the 'Nettle,' and all failed in their duty to execute the operation with due regard to the safety of the pursuer and others engaged on board the 'Nettle.' The defenders the Harbour Commissioners are liable for the negligence of the said Captain James Crombie or the said Mr Wyness. The other defenders are liable for the negligence of the said John Robert Markam. . . ."

In answer the defenders stated—"Ans. 6 for Aberdeen Harbour Commissioners.—Denied. When said rope had been attached as above stated, the assistant harbour-master, everything being then clear so far as he standing on the wharf could see, directed those in charge of the 'Edinburgh' to heave on her winch. In giving said order he was entitled to assume that it would be carried out by those in charge of the 'Edinburgh' with all due care, and he and the defenders—the Aberdeen Harbour Commissioners—are not responsible for any default of co-defenders' servants in carrying out the same. The winch should have been started slowly and carefully so as to get the strain gradually on the rope, and ensure that if the rope fouled anything it might be released without springing or

breaking. When the winch was started, the assistant harbour-master watched the tightening of the rope on board the 'Nettle,' and saw that it had fouled or caught on something on board the 'Nettle,' and was causing her to careen over to starboard. He immediately gave orders to stop heaving, but the rope, either being foul or for other cause unknown to the defenders, sprang suddenly clear of the obstruction, or at least became suddenly taut and knocked the pursuer overboard. The pursuer was not in sight of the assistant harbour-master when the rope caught him, and it is not admitted that he was drawing water as alleged. *Quoad ultra* the pursuer's allegations as to the negligence of the Commissioners are denied, and averred that if the pursuer's injuries were caused by negligence, the negligence was either (1) the negligence of those in charge of the 'Edinburgh,' or of her crew in not seeing that the rope was clear before putting a sudden strain on it or in putting too much steam upon the winch at starting, or in working it too rapidly and so causing the rope to spring up; or (2) was the negligence of the pursuer himself in respect that he, being on the deck of the 'Nettle' and aware of the attachment of the rope and the purpose of it, ought to have kept clear of the rope until the hauling operation was completed, and in failing to do so caused, or at least materially contributed to, the accident. *Ans. 6 for Caledonian Steam Travelling Company.*—Denied that John Robert Markam had a clear view of the deck of the 'Nettle;' that in the circumstances condescended on he had a duty and obligation with regard to the safety of the pursuer; and that he recklessly put on steam without taking proper and sufficient precaution. *Quoad ultra* admitted. Averred that the said John Robert Markam all along, and in particular in applying steam to the winch of the 'Edinburgh,' was acting under the orders of the harbour-master and his assistant. These orders had reference to the placing and mooring of the vessel, and also to moving and removing the same, and the said John Robert Markam was bound to obey these orders, under the Aberdeen Harbour Acts and relative by-laws. Averred further, that from his position at the winch he could not see those on the deck of the 'Nettle;' that he did not know, and could not have known, of any risk of injury to the pursuer, and that in putting on steam in accordance with the orders of the harbour-master or his assistant he relied, as he was entitled to do, on the harbour-master being satisfied that the heaving of the winch and the consequent tightening of the rope were safe and proper steps to take. Averred further, that the pursuer knew, or ought to have known, that the rope was being placed along the deck of the 'Nettle,' and fixed to the stem of said vessel for the purpose of hauling out the 'Nettle,' and that in so doing it would be necessary to heave the rope tight. By his taking up his position at the side of the vessel, over the rope, pursuer acted in face of a known or seen danger, and

materially contributed towards the accident which he himself sustained. The winch of the 'Edinburgh' was carefully and gradually set in motion, and those on board the 'Edinburgh' exercised all due care in carrying out the operations on which they were engaged."

The defenders, the Aberdeen Harbour Commissioners, *inter alia*, pleaded—“(1) The injuries averred not having been caused by the fault or negligence of the defenders, the Aberdeen Harbour Commissioners, or of those for whom they are responsible, the said defenders should be assolvied with expenses.”

The defenders, the Caledonian Steam Trawling Company, Limited, *inter alia*, pleaded—“(4) The servants of these defenders having acted under the instructions of the harbour-master or his assistant, whose orders they were bound to obey, and the injury to the pursuer having arisen in consequence of an order given by the harbour-master or his assistant, these defenders are not in fault, and are entitled to be assolvied with expenses.” In addition both defenders pleaded contributory negligence.

On 13th April 1908 the Sheriff-Substitute (HENDERSON BEGG), after a proof, the import of which sufficiently appears from the opinion, *infra*, of the Lord Justice-Clerk, found in fact that the accident was due to the fault of the servants of both defenders and that there was no contributory fault on the part of the pursuer; found in law that the defenders were jointly and severally liable in damages to the pursuer, which he assessed at £100, and granted decree accordingly.

*Note.*— . . . “I am not disposed to hold that the operation described in the 5th article of the pursuer's condescendence, for the purpose of simultaneously pulling out one vessel and putting another into her place, when the wharf accommodation is so limited that only the stems of the vessels can touch the wharf, is so unusual or so risky as to imply fault on the part of the defenders, who resorted to it on the occasion in question. But I do think that both defenders were bound to adopt every reasonable precaution to avoid damage to the 'Nettle,' which had no crew on board, and injury to such persons as were lawfully on board. Now, Captain Wyness admits that when on board the 'Nettle' he saw several men washing the fish-pond boards; and on the evidence I think that there was nothing to prevent his seeing them from the wharf when he returned there. Similarly Frederick Whyte admits that when he was on board the 'Nettle' with Captain Wyness he saw some men drawing water. Whether Markam, the man at the winch of the 'Edinburgh,' was able to see these men on the 'Nettle's' deck, is uncertain; but the witnesses Jermyson and M'Kimmie, who were near him, saw the pursuer in the act of drawing water immediately before the accident. Without any warning to the pursuer, Captain Wyness gave Markam the order to heave away, and Markam turned on steam, with the result that within half-

a-minute the pursuer was struck by the rope and thrown into the water. . . .

“In these circumstances I do not see how any blame can attach to the pursuer, who was lawfully on board the 'Nettle,' and who got no warning of the intended operation. On the other hand, it seems to me that Captain Wyness was to blame for giving the order to heave away without warning the men, including the pursuer, whom he had seen working on the 'Nettle's' deck, where he and Whyte had loosely laid the rope. It also seems to me that Markam was to blame. Either he saw the men, in which case he should have warned them before putting on steam, or he did not see the fore deck of the 'Nettle' on account of the height of his own vessel's stem, in which case he ought to have had a man on the fore-castle head to see what he himself could not see, to receive the harbour-master's orders and transmit them to him at the winch. Probably as much blame attaches to the skipper, who ought, I think, to have superintended the operation instead of standing idle on the wharf. Further, I think it proved that the winch was not started as slowly as it ought to have been, so as to put the strain gradually on the rope, and ensure that if the rope fouled anything it might be released without springing or breaking.

“Each defender maintains that the other alone was to blame; but I cannot overlook the fact that the operation in question was a joint operation. Captain Wyness did not merely give an order in the abstract; he assisted in laying the rope on the 'Nettle's' deck, and knew when he gave the order to heave away that there were men working close to the rope whom he did not warn. In these circumstances it was a wrong order to give. On the other hand, I cannot hold that Markam was bound to give blind obedience to the order, regardless of circumstances which he knew, or ought to have known, rendering the immediate execution of it dangerous. I have arrived at the conclusion that the accident was due to the fault of the servants of both defenders, after careful consideration of the legal authorities to which I was referred in the course of the able debate to which I had the pleasure of listening. *Taylor v. Burger*, 26th March 1898, 8 Asp. M.C. 364, and 78 Law Times 93; *Mackenzie v. Stornoway Pier and Harbour Commission*, 1907 S.C. 435; *Clyde Shipping Company v. Miller*, 1907 S.C. 1145; and the earlier cases mentioned in Abbott on Shipping, 14th ed., p. 326. . . .”

Both defenders appealed.

Argued for appellants, the Aberdeen Harbour Commissioners—(1) This was a case of accident pure and simple, for which no one was responsible. It could not reasonably have been anticipated. The pursuer must prove fault, and this he had failed to do. The pursuer was guilty of contributory negligence in working without keeping his eyes open. (2) In any event the Harbour Commissioners were not in fault. *Esto* that the harbour-master must give a proper order for carrying out the operation

in question—*Taylor v. Burger*, February 15, 1898, 35 S.L.R. 398; *Renney v. Magistrates of Kirkcudbright*, March 31, 1892, 19 R. (H.L.) 11, 30 S.L.R. 8—he had done so here. Having done so, he was not responsible for the execution of the order—“*The Cynthia*,” 1876, 2 P.D. 52; *Mackenzie v. Stornoway Pier and Harbour Commission*, 1907 S.C. 435, 44 S.L.R. 350. It was for those in charge of the “*Edinburgh*” to carry out the order, and if they failed to carry it out safely they, and not the harbour-master, would be liable.

Argued for appellants, the Caledonian Steam-Trawling Company, Limited—(1) The pursuer's injuries were the result of accident pure and simple, for which no one was responsible. The defenders had only to show that they had exercised ordinary care and caution. They were not bound to take all possible means to prevent the accident. Lord Esher's view in the “*Indus*,” 1886, 12 P.D. 46, had been overruled in the “*Schwan*,” [1892] P. 419, at 432 and 434. (2) If liability attached to anyone, it was to the harbour authorities. If a harbour-master caused a vessel to be moved, he was bound to put a sufficient number of persons on board for the protection of the vessel—Harbours, Docks, and Piers Clauses Act (10 and 11 Vict. cap. 27), sec. 58. That had not been done here. The sole duty of the “*Edinburgh*” was to carry out the orders that were given—*Renney v. Magistrates of Kirkcudbright* (*sup. cit.*); *Taylor v. Burger* (*sup. cit.*). It was not proved that those in charge of the “*Edinburgh*” were negligent in carrying out the orders, for admittedly the cause of the accident was a foul. *Eslo* that the winch had been worked at too great a speed, that did not matter, for the accident was due, not to the fault of the winchman but to the rope being carelessly laid or its course not being watched. If the deputy harbour-master saw the pursuer, he gave a wrong order. If he did not, he was equally in fault in not looking to see whether there was danger.

Argued for respondent—(1) The case was not one of inevitable accident. Pursuer had not only a right but a duty to be on board. He was on deck the whole time and could have been seen. No warning was given him, and he was entitled to assume that nothing was going to be done—Harbours, Docks, and Piers Clauses Act 1847, sec. 58 (*sup. cit.*) The circumstances raised a *prima facie* case of fault against the defenders. They could therefore only escape liability by proving conclusively that the accident was inevitable. This they had not done—“*The Indus*” (*sup. cit.*); *Clyde Shipping Company v. Miller*, 1907 S.C. 1145, 44 S.L.R. 920. (2) Both defenders were in fault, as they had both failed to exercise reasonable care in carrying out what was really a joint operation. The deputy harbour-master ought to have warned the people on board the “*Nettle*.” Those in charge of the “*Edinburgh*” were also in fault, for though they were bound to obey the orders of the harbour-master, they were not thereby

discharged from taking ordinary care. There was a legal obligation on both parties to take proper steps to give warning to the pursuer. It was enough for the pursuer if the Harbour Commissioners were found liable, and it was at any rate certain that one or other of the defenders was responsible.

LORD JUSTICE-CLERK—This case has arisen out of an operation which took place in the harbour of Aberdeen in berthing and unberthing vessels. It seems that trawlers come in such large numbers into the harbour that they have to be berthed with a slant towards the quay. Their stems are brought to the quay so that they may be unloaded over the bow, but they are all placed as close together as they can be. On the occasion in question the “*Nettle*” and another vessel were so near one another, that although there was room for the stem of the trawler “*Edinburgh*” to get in between the two vessels, they could not get the “*Edinburgh*” into a berth without taking out the “*Nettle*.” In order to effect that operation Captain Wyness, who was a servant of the Harbour Commissioners, directed that a warp should be brought from the winch of the “*Edinburgh*” and carried forward through the bollards to the winch at the stem of the “*Nettle*” so that the rope would haul the two vessels. Pulling against one another the “*Edinburgh*” would be hauled into position and the “*Nettle*” would be forced backwards out of position.

Captain Wyness desired those on board the “*Edinburgh*” to pass the warp over the gunwale of the “*Nettle*.” A man Whyte got across from the “*Edinburgh*” on board the “*Nettle*” to assist him, and the two together led the rope along the deck of the “*Nettle*” passing it behind the rigging so that it lay about a foot from the gunwale. Captain Wyness not only saw that done but himself assisted to do it. It was his operation, and he was the person who knew what it was he wanted to do. Whyte merely acted as his assistant in the matter. The reason for Whyte acting in the matter was that Captain Wyness knew there was no crew on board the “*Nettle*.” There were some men on board, but they were not part of the vessel's crew. The vessel was absolutely without a crew at the time. Whyte and he got the rope along the deck and got the bight of it on the pawl of the winch. Whyte stood by to do what was necessary if an operation had to be done. Captain Wyness again mounted to the quay.

In all these circumstances if there was any fault committed I think Captain Wyness was responsible for that fault.

The next question is, was there any fault? There were several men on board the “*Nettle*” and Captain Wyness had a full view of them from the quay. He tried to make out that the “*Nettle*” was so high at the prow that he could not see over it; but that is plainly disproved. The height of the prow above the quay was only 2½ feet; he could have seen if it had been 4

feet above. That he could see the deck of the vessel is proved by several witnesses. Their evidence is to the effect that he himself saw that a foul had taken place on the "Nettle," because when the rope went over the gunwale of the "Nettle," instead of its being drawn in towards the winch of the "Nettle" it remained perpendicular, showing that it was gripped somewhere near the deck. That being so, he gave the order "avast heaving," showing at once that there was danger; but it was too late, and the pursuer, who was leaning over the bulwarks bringing up his pail of water in order to haul it up to the deck, was caught on the breast and under the arms as described by the witnesses and turned a somersault into the water.

Now the first question which arises is, was there any fault in that foul occurring? It may be that it might be held to be a pure accident; but I must say that I think when Captain Wyness brought this warp over the bulwarks of the "Nettle" and had it carried forward to the bow of that vessel, it was his duty to see when it was so laid that it should not catch. But assuming for a moment that he could not be held to be in fault so far as the laying of the warp was concerned, and that the occurrence might be treated as a pure accident, the question arises, did he or did he not act carelessly in giving the order to heave in circumstances which made it dangerous to those on board the "Nettle." If he saw the pursuer leaning over the gunwale I do not think that it would be disputed that he should not have given that order until he ordered him clear and saw him clear. He says that he did not see him and that he never saw him until he was up in the air. Now, as he was looking in the direction in which the foul occurred, he should have seen the pursuer, unless there was something hiding him from him, which there was not; and if he could see him in the air he should have seen him on the deck, as in the air he was only a little higher than on the gunwale. His recollection is probably perfectly honest, and his state of memory is that he cannot recall having noticed him as he was watching the rope. But had he been looking out to see that all was safe on board the "Nettle" he must have seen the pursuer, and I would attribute to him nothing less than carelessness when he did not make that observation before he gave the order to heave. Therefore I think the accident up to this point is attributable to blame on the part of the servant of the Harbour Commissioners.

The only remaining question is whether the owners of the "Edinburgh" are liable for some fault committed by the crew of the "Edinburgh." I have been unable to see that there is any such fault made out. The "Edinburgh" no doubt had an interest in this warping which was being done. But it was the harbour-master's operation, in which they were bound to obey the orders of the harbour-master, and unless they did something which was culpably wrong, and therefore not within the orders of the harbour-master, they could not be

liable, I think, for anything that happened.

In the first place, they had no duty to keep a look-out on the rope. I am quite satisfied that nobody on board the "Edinburgh" could keep such a look-out so as to see the rope. Where it went over the bulwarks it would be in view, but when it went over the bulwarks and down towards the deck as it did—from that time a person on board the "Edinburgh" could not observe it.

The next question is, did Markam, the man in charge of the winch, do anything that was wrong? It is said that he should have looked out and seen that the deck of the "Nettle" was clear before he turned his winch on. I dissent entirely from any such view. If a man is working a winch he has no business to look away from it at all. He does not work it to his own mind, he works it under the directions of others, and his business is to see that he operates the winch when he is ordered to do so. I think Markam was doing his duty when he was attending to the winch and not allowing his attention to be drawn away from it.

The only other question is connected with the "Edinburgh's" man Whyte. Whyte had been taken on board by Wyness to assist the latter in taking the rope along the deck of the "Nettle." When he got it forward and passed the bight over the pawl, if he had any duty his sole duty was to see that it did not slip off the pawl, and to look to Captain Wyness who was on the quay so as to be ready to take any orders from him. It is always of importance to see the man giving the orders. If Whyte did that I think he did his duty, and the evidence which he gives is consistent with his having done his duty. He never saw the pursuer until he was in the water; probably he was attending to the pawl and looking out for orders from Wyness. The first thing he heard was the splash of the pursuer in the water. I am satisfied that no fault was committed by either of these two men.

The only other question is whether there was fault in the way in which the winch was worked. I am satisfied on the evidence that it is not proved that there was. There is evidence to show that witnesses thought that Markam started the winch too fast; there is other evidence to the effect that he did not start it too fast. I think the answer to that question is of no consequence in this case whatever, because whether the winch was started fast or started slow, the blow which was struck by the rope was caused by the retention of the portion of the rope which was held fast so as to be in an angled position; and whether the rope was pulled at a high or a low speed matters not at all. What caused the accident was that the rope was suddenly set free at the tension at which it was at that moment and thrown upwards. The fact that it was angled and therefore longer than if it had gone straight forward to the pawl, caused it to fly higher than the gunwale, and that was due in no way to the speed applied to it being too great at the beginning. Had the winch been started at a high rate of speed, the rope might have

risen faster, but it never could have risen higher than it did. If there had been no fouling of the rope the speed at which the winch was started might have contributed to the force of the blow with which the man was struck. But his injuries cannot be explained except on the view that there was a foul, and in that case I am clearly of opinion that the speed could not have contributed to the accident in any way.

Therefore, upon the whole matter, I think the interlocutor of the Sheriff-Substitute must be altered to some extent. Some of his views, I think, require comment. He says that Markam was to blame because "either he saw the men, in which case he should have warned them before putting on steam, or he did not see the fore deck of the 'Nettle' on account of the height of his own vessel's stem, in which case he ought to have had a man on the fore-castle head to see what he himself could not see, to receive the harbour-master's orders and transmit them to him at the winch." These observations I do not think are right. It was not his duty to see to that at all. He knew that Captain Wyness was taking charge of the operation, he knew Captain Wyness had been on board the "Nettle" and he had nothing to do but to obey orders. As to his having some person on the fore-castle head to see what he could not see and to receive the harbour-master's orders, I see no ground for that at all. The whole distance between the harbour-master and the winch could not be much more than 30 or 40 feet. Even supposing it had been 50 or 60 feet, there was no need in sending orders from the quay to a man on the deck for another person to pass them on. Then he says he thinks the winch was not started as slowly as it ought to have been. I have already made my observations upon that. It seems to me not proved by the evidence, and further, it cannot have contributed to the accident. If your Lordships agree with me, the result will be to recal the interlocutor in so far as it finds those on board the "Edinburgh" liable and to find the Harbour Commissioners liable.

LORD LOW—I concur.

LORD ARDWALL—I confess I had some doubts as to whether the owners of the "Edinburgh" are not also liable along with the Aberdeen Harbour Commissioners through their servants for the occurrence of this accident; but having heard the opinion delivered by your Lordship I am not disposed to dissent from the judgment proposed.

LORD DUNDAS was absent.

The Court sustained the appeal; found in fact that the accident was due to the fault of the servants of the defenders the Aberdeen Harbour Commissioners, that no fault was proved against the other defenders the Caledonian Steam Trawling Company, Limited, and that there was no contributory fault on the part of the pursuer; found in law that the defenders the

Harbour Commissioners were liable in damages to the pursuer; decerned against them accordingly for payment to him of the sum of £100, and assoilzied the other defenders.

Counsel for the pursuer moved that the Aberdeen Harbour Commissioners should be found liable for the expenses both of the pursuer and the successful defenders, and argued—The pursuer knew before the action was raised that both defenders were going to maintain counter defences against each other. He was therefore bound to convene them both—*Thomson v. Edinburgh and District Tramways Company, Limited*, January 15, 1901, 3 F. 355, 38 S.L.R. 263; *Morrison v. Waters & Company*, June 5, 1906, 8 F. 867, 43 S.L.R. 646.

The defenders the Aberdeen Harbour Commissioners opposed the motion, and argued—The pursuer should have selected the party against whom his claim really lay. He was not entitled to convene two defenders and say that liability lay on one or other of them. That being so, he was liable in expenses to the defenders, against whom he had no cause of action—*Mackintosh v. Galbraith & Arthur*, November 6, 1900, 3 F. 66, 38 S.L.R. 53.

The Court found the defenders the Harbour Commissioners liable in expenses both to the pursuers and to the defenders the Caledonian Steam Trawling Company, Limited, in both Courts.

Counsel for the Pursuer (Respondent)—Morrison, K.C.—A. R. Brown. Agents—Mackay & Young, W.S.

Counsel for the Defenders (Appellants) the Aberdeen Harbour Commissioners—Cooper, K.C.—Sandeman. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Defenders (Appellants) the Caledonian Steam Trawling Company, Limited—Murray—Lippe. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Thursday, March 4.

## FIRST DIVISION.

[Sheriff Court at Glasgow.]

HAY'S TRUSTEES AND OTHERS v.  
LONDON AND NORTH-WESTERN  
RAILWAY COMPANY.

*Jurisdiction*—*Sheriff*—*Sheriff Courts (Scotland) Act 1907* (7 Edw. VII, cap. 51), sec. 6 (b)—*Defender having Office within the Sheriffdom*—"Place of Business."

The Sheriff Courts (Scotland) Act 1907 enacts—section 6—"Any action competent in the Sheriff Court may be brought within the jurisdiction of the Sheriff . . . (b) When the defender carries on business, and has a place of business within the sheriffdom, and is cited either personally or at such place of business."